IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 1346 of 2005

Between:

1 P. Veeraswamy S/o Pullaiah , R/o Nellore
2 D. Prabhakar S/o Chlalapathi Gupta R/o Nellore
3 D. Swarna Latha W/o Prabhaar, r/o Nellore

..... PETITIONERS

AND

1 The Commissioner & Special Officer, Nellore Municipal Corporation, Nellore
2 The Mandal Revenue Officer, Nellore Nellore District
3 The Executive Engineer, R&B Department Nellore

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or Writ more particularly one in the nature of writ of Mandamus declaring the action of the respondents in seeking to demolish the shop rooms of the 1st petitioner in first and second floors bearing assessment No. 3051, Dr. No. 303 in Ward NO. 17 (Old ward No. 12) situated towards Western side of Trunk Road, Nellore and the shop rooms of the 2&3 petitioners in the ground floor bearing Dr. No. 303-1 situated in ward NO. 17 towards West of the GNT Road Nellore without following the due process of law as illegal, unconstitutional and violative of the provisions of Land Aquisition Act, Principles of Natural Justice and Art. 14, 21 and 300-A of Constitution of India and consequently direct the respondents not to take steps to demolish the above said shop rooms without following due process of law and pass such other orders or further reliefs as this Hon'ble Court deems fit and proper in the interest of justice.

Counsel for the Petitioners: MR.M.VENKATA NARAYANA

Counsel for the Respondent No1: Sri S.Nageswar Reddy

Counsel for Respondent No.2: G.P. For Revenue

Counsel for Respondent No.3: G.P. for R & B

The Court at the stage of admission made the following ORDER:

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Heard the learned counsel for the petitioners, learned Government Pleader appearing for respondents 2 and 3 and Sri S.Nageswar Reddy, learned standing counsel appearing for the first respondent.

The petitioners seek a Writ of Mandamus directing the respondents not to demolish the shop rooms of the first petitioner in first and second floors of Door No.303, in Ward No.17(old Ward No.12), situated towards western side of Trunk Road, Nellore and the shop rooms of petitioners 2 and 3 in ground floor of Door No.303-I, in Ward No.17, situated towards west of the G.N.T. Road, Nellore, without following due process of law, as arbitrary and illegal.

It is represented by the learned counsel appearing for both parties that the issue involved in this writ petition is squarely covered by a decision of this Court in W.P. No. 21198 of 1997 and batch, dated 03.02.1998, wherein the Division Bench while considering an identical question, issued guidelines as under:

1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

2. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass

appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

4. If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

6. If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures.

The learned Government Pleader as well as the learned standing counsel appearing for the first respondent does not dispute the above legal position.

Accordingly, the writ petition is disposed of directing the respondents not to demolish the structures in question, without following the guidelines issued by the Division Bench in the above Writ petition. No costs.

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(G. ROHINI,J)

Note: Issue operative portion by wire

(B/O)

Kdl

To

1 The Commissioner & Special Officer, Nellore Municipal Corporation, Nellore
2 The Mandal Revenue Officer, Nellore Nellore District
3 The Executive Engineer, R&B Department Nellore

4 Two C.Cs. to the Government Pleader for Revenue, High court of A.P., Hyderabad, (OUT).

5 Two C.Cs. to the Government Pleader for R & B, High court of A.P., Hyderabad, (OUT).

6 Two C.D. Copies.